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*PROPOSED COUNSEL TO THE DEBTORS
AND DEBTORS IN POSSESSION*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re:)	
)	Chapter 11
TOMMY'S FORT WORTH, LLC, <i>et al.</i> , ¹)	Case No. 24-90000
Debtors.)	(Jointly Administered)
)	

**DEBTORS' LIMITED OBJECTION TO
(I) M&T BANK'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
AND (II) M&T BANK'S PROPOSED ORDER REGARDING EMERGENCY MOTION
TO APPOINT CHAPTER 11 TRUSTEE**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE

Tommy's Fort Worth, LLC, *et al.*, as debtors and debtors-in-possession ("Tommy's" or "Debtors"), by and through undersigned counsel, files this limited objection (the "Limited Objection") to M&T Bank's Proposed Findings of Fact and Conclusions of Law (the "M&T's

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are: Tommy's Fort Worth, LLC (3473); Tommy's Holding Company, LLC (2662); Tommy's Grand Rapids, LLC (9224); Tommy's Castaic, LLC (7501); Tommy's Lewisville, LLC (4750); High Country Watersports, LLC (6160); Walloon Lake Village Marina, LLC (0277); MKB Florida Holdings, LLC (5698); Tommy's Detroit, LLC (5242); Tommy's California Fresno, LLC (8597); Tommy's Phoenix, LLC (3036); Tommy's Las Vegas, LLC (7721); Tommy's Chattanooga, LLC (0839); Tommy's California Ventura, LLC (5149); Tommy's Rancho Cordova, LLC (1070); Tommy's Stockton, LLC (1338); and Tommy's Knoxville, LLC (8052).

Proposed Findings”) [Dkt. No. 168] in Support of Agreed Emergency Motion to Appoint Chapter 11 Trustee (the “**Agreed Motion**”) and the proposed order (the “**Proposed Order**”) submitted on the Agreed Emergency Motion to Appoint Chapter 11 Trustee, and would respectfully show the Court the following in support thereof:

1. The Debtors have consented to the appointment of a Chapter 11 Trustee pursuant to 11 U.S.C. § 1104(a)(2), as being in the best interests of the Debtors’ creditors and the Debtors’ estates. There is no dispute that the Debtors, without the use of Cash Collateral, cannot pay their payroll, cannot pay other debts, and cannot operate their business, making the appointment of a Chapter 11 Trustee in the best interests of the creditors and the estates.

2. Given the Debtors’ and the U.S. Trustee’s consents and agreements, no further evidence is necessary to grant the relief that the Debtors have consented to with M&T Bank (“**M&T**”)— the appointment of a Chapter 11 Trustee.

3. Despite M&T’s assurances that if the Debtors consented to the appointment of a Chapter 11 Trustee, such “agreed” motions and orders would be limited, M&T filed the “Agreed” Motion, which over Debtors’ objections, contain numerous unsubstantiated allegations, exaggerations, and conveniently lacks distinction between pre- and post-petition acts.

4. Given the consents by the Debtors and the U.S. Trustee, M&T’s inclusion of unsubstantiated allegations in the so-called “Agreed” documents further stipulating to additional facts is unwarranted and beyond what has been agreed to by the parties. Contrary to the assurances provided, the Agreed Motion and Proposed Order presented by M&T contain unnecessary and unsubstantiated allegations. Moreover, the Proposed Findings provide the signature of Gutnicki’s attorney, Liz Boydston, on behalf of the Debtors. This is in error and borders on a blatant

misrepresentation to the Court. Ms. Boydston never consented or agreed to the Proposed Findings, let alone to approve her signature be included on any such filing.

5. The Debtors are not stipulating, waiving, or binding themselves, the Chapter 11 Trustee, or any other party to any facts, allegations, or statements, especially that would insulate M&T from any objections by any party to their claims against the Debtors. In short, Debtors do not object to the appointment of a Chapter 11 Trustee, but the Debtors do object to M&T's Proposed Findings because they are unnecessary.

6. The Debtors also object that any party in interest be bound to these facts alleged by M&T. Most importantly, any interested party should be afforded the full ability and right, just as the Debtors would, to investigate and object to the amount of M&T's liens and claims and not be bound to the facts alleged by M&T in the Proposed Findings.

7. Additionally, M&T asked the Debtors and their professionals for a "Transition Budget" (the "**Budget**"), setting forth the estimated budget for the continuation of and provision of services that M&T has requested that the Debtors, their employees, Gutnicki LLP, and Force10 Partners continue to provide to M&T *for the benefit of M&T and the to-be-appointed Chapter 11 Trustee*. Yet that Budget has not been discussed, negotiated, uploaded, or approved. A copy of the Budget is attached hereto as **Exhibit A**.

8. M&T has made assurances that if the Debtors consent to the appointment of a Chapter 11 Trustee, it would provide for the payment of the Debtors' employees through the transition period. Yet yesterday, M&T stated that, "Please be aware that no future payrolls have been authorized."

9. Similarly, M&T requested specifically that Gutnicki and Force Ten to continue to provide services during the transition period. This includes requesting that Force Ten prepare the

Schedules and Statements of Financial Affairs. Much like future payrolls, M&T has made no assurances to the payment of professional fees for services during the transition period.

10. Although M&T has made these specific requests and the Debtors have consented to such, M&T now wants an order entered that does not provide for any assurances to the employees or to the transition teams that will ensure that the Chapter 11 Trustee will assist in the smooth and efficient transition of the business. Again, while the Debtors do not object to the appointment of a Chapter 11 Trustee, no appointment should occur without M&T first agreeing to a reasonable budget during the transition period.

[Remainder of page intentionally left blank.]

WHEREFORE, Debtors respectfully request that this Court deny entering M&T's Proposed Findings and for such other and further relief as this Court deems just and equitable.

Respectfully submitted,

Dated: June 14, 2024
Dallas, Texas

GUTNICKI LLP

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*Proposed Counsel to the Debtors and Debtors
in Possession*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was served by CM/ECF Notification on June 14, 2024 in accordance with Bankruptcy Rule 9036 and L.B.R. 9036-1.

/s/ Liz Boydston
Liz Boydston

Exhibit A

Budget

Tommy's Boats

7-Week Cash Forecast

Base Revenue Scenario With Las Vegas Closed

Not updated for actuals;
Wk3 beg cash confirmed

Cash Receipts	Week 1 05/28/24	Week 2 05/31/24	Week 3 06/07/24	Week 4 06/14/24	Week 5 06/21/24	Week 6 06/28/24	Week 7 07/05/24	Total Wks 4 - 7
Boat Sales	784,350	737,154	677,401	533,062	442,907	484,944	335,671	1,796,584
Proshop	52,530	25,000	75,000	0	0	0	0	0
Service	86,256	100,000	200,000	0	0	0	0	0
Waterfront	4,784	10,000	40,000	0	0	0	0	0
Estimated Sales Tax (5%)	39,218	36,858	33,870	26,653	22,145	24,247	16,784	89,829
Dealership Sales	0	0	0	0	0	0	0	0
Total Cash Receipts	967,138	909,012	1,026,271	559,715	465,052	509,191	352,455	1,886,413

Operating Disbursements

Cost of Goods Sold

Boat Sales (payment to M&T)	0	0	0	0	0	0	0	0
Proshop	0	0	0	0	0	0	0	0
Service	75,000	20,000	40,000	0	0	0	0	0
Fuel	45,000	17,000	0	0	0	0	0	0
Sales Tax	0	0	0	136,598	22,145	24,247	16,784	199,774
Registration	0	4,200	7,700	1,650	1,650	1,650	1,500	6,450
Total Cost of Goods Sold Disbursements	120,000	41,200	47,700	138,248	23,795	25,897	18,284	206,224

Personnel Related Disbursements

Wages, Taxes, 401k	0	756,141	36,579	611,915	0	666,224	0	1,278,139
In Season Additional Waterfront Employees	0	0	0	0	0	0	0	0
Employee Healthcare Benefits	0	0	126,650	0	0	126,650	0	126,650
Key Employee Retention Plan	0	0	0	0	0	0	0	0
Total Personnel Disbursements	0	756,141	163,229	611,915	0	792,874	0	1,404,789

Operating Disbursements

Rent	0	0	385,000	0	0	0	0	0
Insurance	148,985	0	0	148,980	0	0	148,980	297,959
Utilities	0	0	40,700	23,001	18,487	33,154	33,154	107,795
Credit Card Processing Fees	682	0	0	0	0	0	10,241	10,241
Advertising / Promotion	0	0	0	0	0	0	0	0
Office Supplies	0	0	0	0	0	0	0	0
Repairs and Maintenance	0	0	0	0	0	0	0	0
Software / Hosting / IT	0	0	0	15,729	0	15,729	0	31,459
Auto Expense / Travel	0	0	0	0	0	0	0	0
Property Tax, Income Tax, License fees	0	1,025	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0
Sales Tax & Registration - Past Due	0	0	219,586	0	0	0	0	0
Total Operating Disbursements	149,667	1,025	645,286	187,710	18,487	48,883	192,374	447,454

Net Operating Cash Flow

697,471	110,646	170,056	-378,158	422,770	-358,463	141,797	-172,054
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Tommy's Boats

7-Week Cash Forecast

Base Revenue Scenario With Las Vegas Closed

Not updated for actuals;
Wk3 beg cash confirmed

	Week 1 05/28/24	Week 2 05/31/24	Week 3 06/07/24	Week 4 06/14/24	Week 5 06/21/24	Week 6 06/28/24	Week 7 07/05/24	Total Wks 4 - 7
Restructuring								
Gutnicki LLP			0	0	0	421,439	0	421,439
Force 10 Partners			0	0	0	230,000	0	230,000
Norton Rose Fulbright US LLP (M&T Bank Counsel)			0	0	0	0	0	0
FTI (M&T FA)			0	0	0	0	0	0
Hilco (Investment Banker)			0	0	0	0	0	0
UCC Counsel			0	0	0	0	0	0
UCC Financial Advisor			0	0	0	0	0	0
Tax Advisors			0	0	0	0	0	0
Ordinary Course Professionals			0	0	0	0	0	0
Omni Agent Solutions (Noticing Agent)			0	0	50,000	0	0	50,000
U.S. Trustee Fee			0	0	0	0	0	0
Total Restructuring	0	0	0	0	701,439	0	0	701,439
Cash Flow Before Financing	697,471	110,646	170,056	-378,158	-278,669	-358,463	141,797	-873,493
Financing Payments								
M&T Bank 100% Revenue			1,120,314	992,401	533,062	442,907	484,944	2,453,314
M&T Bank Principal			0	0	0	0	0	0
Total Financing Payments	0	0	1,120,314	992,401	533,062	442,907	484,944	2,453,314
Net Cash Flow	697,471	110,646	-950,258	-1,370,559	-811,730	-801,370	-343,147	-3,326,807
Beginning Cash			5,226,154	4,275,896	2,905,337	2,093,607	1,292,237	4,275,896
Ending Cash			4,275,896	2,905,337	2,093,607	1,292,237	949,090	949,090
DIP Financing Draws			0	0	0	0	0	0
Ending Cash (After DIP Funding)			4,275,896	2,905,337	2,093,607	1,292,237	949,090	0
M&T Floor Plan Balance - Beginning	100,687,454	100,687,454	100,687,454	99,567,140	98,574,739	98,041,677	97,598,770	99,567,140
Payments from Tommy's	0	0	1,120,314	992,401	533,062	442,907	484,944	2,453,314
Debt purchased or assumed by buyer	0	0	0	0	0	0	0	0
M&T Floor Plan Balance - Ending	100,687,454	100,687,454	99,567,140	98,574,739	98,041,677	97,598,770	97,113,826	97,113,826
Beginning Cash			4,275,896	2,905,337	2,093,607	1,292,237	1,292,237	4,275,896
Cash Receipts			533,062	442,907	484,944	484,944	335,671	1,796,584
Operating Spend			-911,220	-20,137	-843,407	-193,874	-193,874	-1,968,638
Professional Fees			0	0	-701,439	0	0	-701,439
M&T pymts			-992,401	-533,062	-442,907	-484,944	-484,944	-2,453,314
Ending Cash			4,275,896	2,905,337	2,093,607	1,292,237	949,090	949,090